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SUBJECT: BIOFUELS RULEMAKING: GUIDANCE ON RESPONDING TO
CONCERNS AND INQUIRIES

¶1. (U) This cable provides information about an imminent rulemaking announcement that is likely to be of significant international interest, and guidance for responding to requests for information or comments. Posts should restrict their discussion to the talking points in paragraph 17. Inquiries or issues that go beyond the talking points, including any next steps on dialogue or engagement on the rulemaking, should be referred to Washington, specifically the points of contact in paragraph 18.

¶2. (U) SUMMARY: EPA is proposing revisions to the National Renewable Fuel Standard program (RFS), as required by the Energy Independence and Security Act of 2007 (EISA) in a Notice of Proposed Rulemaking (NPRM). EISA increased the required volumes of biofuels in the U.S. fuel supply and set required levels of greenhouse gas emissions reductions for biofuels as compared to the petroleum fuel they replace. This is a significant rulemaking for a number of reasons. Chief among them from an international perspective will be the life cycle analysis estimating greenhouse gas (GHG) emissions from indirect land use change (ILUC) associated with growing biofuel feedstocks. The U.S. recognizes that there is likely to be an interest in potential trade implications. The proposed RFS rule is written to treat neutrally the country of origin of the fuel. The same proposed requirements would apply to domestic producers, importers, and foreign producers. Biofuel facilities -- domestic and foreign -- that existed before the December 2007 EISA enactment date are grandfathered and are not required to meet the greenhouse gas (GHG) requirement for the Renewable Fuel category. Throughout the rulemaking, EPA has worked closely with other countries -- particularly significant biofuels producers and exporters, such as Brazil -- in addition to other stakeholders and USG agencies to hear concerns, discuss the RFS, and to incorporate best-available data. EPA will continue this practice during the 60-day public comment period. In addition, the U.S. Government will notify the WTO TBT Committee of the NPRM. OMB completed its review of the NPRM on April 29, and EPA expects to publish it early during the week of May 4th. Two EPA Fact Sheets that will accompany the publication provide additional detail on the RFS program and the proposed GHG life cycle analysis. This document focuses on RFS international issues.

Renewable Fuel Standard Overview

¶3. (U) EPA is proposing revisions to the National Renewable Fuel Standard program (RFS), as required by the Energy Independence and Security Act of 2007 (EISA). EISA requires a significant increase in the volume of renewable fuels that are blended into transportation gasoline and diesel in the U.S., reaching a total of 36 billion gallons in 2022. Within this total, EISA established specific volume requirements for several different biofuel types: advanced biofuels, including cellulosic biofuels, non-cellulosic biofuels, and biomass-based diesel and general renewable biofuels.

¶4. (U) To qualify for the volume requirements, renewable fuel feedstocks must come from previously-cultivated lands, meet the definition of renewable biomass and achieve certain levels of greenhouse gas emission reductions in comparison to the gasoline and diesel fuels they displace. Cellulosic biofuels must reduce GHG emissions by 60%; non-cellulosic

advanced by 50%, biomass based diesel by 50%, and general renewable fuels from new facilities by 20%. However, EISA grants EPA authority to lower each of these thresholds by as much as 10%, and EPA is proposing to reduce the non-cellulosic, advanced biofuels threshold from 50% to 44% or lower, depending on results from the final GHG life cycle analyses.

¶15. (U) Just as the regulatory requirements established in this proposal will apply to domestic and foreign producers and importers of renewable fuel, both foreign and domestic facilities constructed prior to enactment of EISA are considered to be grandfathered for the Renewable Fuel category and not required to meet the 20% GHG emission reduction threshold.

International Issues

¶16. (U) EPA Outreach to International Counterparts
Throughout the RFS rulemaking process, EPA has worked closely with other countries in addition to domestic stakeholders and USDA, DOE, State, and other USG agencies. In discussing this NPRM, posts should underscore that this is a proposal, and not a final rulemaking. Posts should also underscore that all international stakeholders are invited to comment on the proposed rule, and the submission of specific data and other detailed information is especially welcome.

¶17. (U) Brazil. Due to Brazil's significance as the largest ethanol exporter and source of renewable fuel volume, and because of the potential impacts of the indirect impacts associated with changes in agriculture markets, EPA tried to gather the best data available from Brazil for the RFS modeling efforts. EPA has had numerous meetings, both in the U.S. and in Brazil, with Brazilian government, industry, and academic representatives and experts to discuss the RFS and to improve Brazil-specific data incorporated into the proposed life cycle analysis. EPA is working with Brazilian Institute for International Trade Negotiations (ICONE) to incorporate a Brazil agricultural sector module developed by ICONE into the international economic model (FAPRI) in the life cycle analysis. As EPA continues to refine the life cycle analysis for the final rule, the Agency will continue to work with Brazil to incorporate new information on Brazilian sectors and policies.

¶18. (U) EU. EPA has worked in coordination with State, USTR, USDA, and DOE to engage in technical exchanges with European Commission and country-specific counterparts working on similar life cycle assessments for the EU Renewable Energy Directive.

¶19. (U) Climate Change. The United States is committed to combating climate change both at home and abroad. President Obama has called for a domestic cap and trade program which would reduce US emissions by 80% by 2050. We are also actively engaged in working towards a successful outcome at the climate negotiations later this year in Copenhagen. This process will be supported by the President's Major Economies Forum on Energy and Climate, which seeks to inform and complement the UNFCCC process. The EPA NPRM provides an important step in advancing the science behind measuring greenhouse gas emissions from biofuels production and use.

Trade Considerations.

¶10. (U) The U.S. recognizes that there is interest in potential trade implications of biofuels. We are committed to implementing the NPRM through a transparent and open public comment process, and consistent with our international trade obligations, including under the WTO Technical Barriers to Trade (TBT) agreement. We will notify the TBT committee about the NPRM, and WTO Members are likely to raise trade concerns at the June 24-25 meeting.

¶11. (U) The proposed RFS rule is written to treat neutrally the country of origin of the fuel. The same proposed requirements would apply to domestic producers, importers,

and foreign producers. The same methodology is used to determine the GHG life cycle performance of all biofuels, regardless of country of origin. The proposed rule outlines which biofuels will receive credit toward the volume requirements under the Energy Independence and Security Act of 2007 (EISA). It also makes public EPA's proposed GHG emissions reduction for renewable fuel pathways of biofuels (both domestic and imported) and the methodologies used to make those initial determinations. Trading partners may have questions about EPA's analysis, particularly its assumptions and data relating to ILUC. Trading partners may also have an interest in using these initial determinations and/or methodologies in their own examination of biofuels, including U.S. biofuels.

General Renewable Fuel & Grandfathering Provisions

¶12. (U) Of the 36 billion gallons of renewable fuel required to be blended into gasoline by 2022, 15 billion gallons may be in the general Renewable Fuel category. Biofuel facilities -- domestic and foreign -- that existed before December 2007 EISA enactment date are grandfathered and are not required to meet any GHG requirement to qualify for this category. For other facilities, any renewable fuel pathways that demonstrate reductions in GHG emissions by at least 20% can qualify in the general Renewable Fuel category.

Advanced Biofuel: Proposed Threshold Adjustments

¶13. (U) EPA market projections show imported sugarcane ethanol may contribute substantially to filling the Advanced biofuel category volume. EISA assigns Advanced biofuels a 50% GHG reduction threshold. For sugarcane ethanol, one of the proposed life cycle analysis methods (30 year time horizon, 0% discount rate) shows a 26% reduction in GHG emissions; another (100 year 2% discount rate approach) indicates a 44% reduction. EISA provides EPA with authority to adjust thresholds downward by up to 10 percent. In the NPRM, EPA proposes to adjust the GHG threshold for Advanced biofuels to 44%, or potentially as low as 40%, depending on results from the final analyses.

Indirect Land Use Change

¶14. (U) EISA mandates that GHG emission assessments evaluate the full life cycle emission impacts of fuel production, taking into account both direct and significant indirect emissions, such as significant emissions from land use changes in comparison to the life cycle emissions of 2005 petroleum baseline fuels displaced (gasoline or diesel). The life cycle analysis assesses the aggregate quantity of GHG from all stages of fuel and feedstock production and distribution, from feedstock generation and extraction through distribution and delivery and use of the finished fuel and from significant indirect responses to fuel production, such as land use change. EPA recognizes the significance of using life cycle GHG emission assessments that include indirect land use changes. Therefore, the proposed rulemaking is transparent in breaking out the various sources of GHG emissions to enable readers to readily interpret the impact of including international land use impacts.

Next Steps

¶15. (U) A sixty day public comment period on the proposed rule will commence after NPRM publication. Because life cycle analysis is a new part of the RFS program, EPA is making multiple efforts to solicit public and expert feedback on its proposed approach. EPA will hold a public workshop focused specifically on life cycle analysis during the comment period to assure full understanding of the analyses conducted, the issues addressed and the options that are discussed. EPA will continue technical exchange with Brazil, the EU, and other interested countries and their stakeholders.

¶16. (U) Before the final rulemaking, EPA will conduct peer-reviews of key components of the analysis. EPA is

specifically seeking peer review of the following components: use of satellite data to project future land use changes; the land conversion GHG emissions factors estimates used for different types of land use; estimates of GHG emissions from foreign crop production; methods to account for the variable timing of GHG emissions; and how the several models EPA has relied upon are used together to provide overall life cycle GHG estimates.

17. (U) Talking Points

Proposed Rulemaking and Public Input

--EPA has published a Notice of Proposed Rulemaking (NPRM) on changes to the Renewable Fuel Standard (RFS), as mandated by the Energy Independence and Security Act of 2007 (EISA).

--EISA requires an increase in renewable fuels that are blended into transportation gasoline and diesel, reaching a total of 36 billion gallons in 2022.

--Several specific categories of renewable fuel volume targets were established. These include specific volume standards for advanced biofuels, including cellulosic biofuels, non-cellulosic biofuels, and biomass based diesel and general renewable biofuels.

--To qualify for the volume requirements, renewable fuel feedstocks must come from previously cultivated lands, meet the definition of renewable biomass and achieve certain levels of greenhouse gas emission reductions in comparison to the gasoline and diesel fuels they displace.

--Cellulosic biofuels must reduce GHG emissions by 60%; non-cellulosic advanced by 50%, biomass based diesel by 50%, and general renewable fuels from new facilities by 20%.

--A 60-day comment period follows the publication of the proposed rule in the U.S. Federal Registry during which EPA welcomes dialogue, input, and additional analyses during the 60-day public comment period.

-- A public hearing will be held during the 60-day comment period. In addition, EPA will hold a two day work shop on the proposed life cycle analysis.

--EPA will -- and is required by law -- consider all public input when formulating the final rulemaking.

The same proposed requirements would apply to domestic producers, importers, and foreign producers.

Throughout the RFS rulemaking process, EPA has worked closely with other countries in addition to domestic stakeholders and US government agencies. The U.S. Government plans to notify this measure to the WTO Committee on Technical Barriers to Trade, and looks forward to receiving comments from other WTO members on it.

Climate Change

--The United States is committed to combating climate change both at home and abroad.

--The EPA NPRM provides an important step in advancing the science behind measuring greenhouse gas emissions from producing biofuels.

IF ASKED

Indirect Land Use Change

--EISA mandates that life cycle GHG emission assessments evaluate the full life cycle emission impacts of fuel production, taking into account both direct and significant indirect emissions such as significant emissions from land use changes.

--EPA recognizes the significance of using life cycle GHG emission assessments that include indirect land use changes, and the proposed rulemaking is transparent in breaking out the sources of GHG emissions.

--EPA welcomes new information, data, and analyses that will contribute to these analyses.

GHG emission reduction from advanced biofuels

--EISA assigns Advanced biofuels a 50% GHG reduction threshold; but also provides EPA with authority to adjust thresholds downward by up to 10 percent.

Biofuel facilities) domestic and foreign) that existed before the December 2007 EISA enactment date are grandfathered and are not required to meet the GHG requirement for the Renewable Fuel category.

Policy Based on Sound Science

--The Obama administration is committed to basing policy on sound science.

-- EPA has used the best available data and peer-reviewed models to estimate life cycle GHG emissions associated with different renewable fuels.

--EPA will continue to refine the life cycle methodology before the final rulemaking and is conducting further peer-review of key component of the analysis. EPA will continue to refine its methodology as new data and analytical tools become available.

Consistency of the rule with WTO obligations

--We plan to notify this notice of proposed rulemaking to the WTO TBT Committee and look forward to comments from our WTO partners. We are committed to implementing the final rule, after taking into account such comments, in a manner consistent with our international trade obligations.

¶18. Points of Contact

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--State: Noel Gurwick, GurwickNP@State.Gov, (202) 647-1713
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¶19. This cable has been coordinated with NSC, EPA, USTR, USDA, and COMMERCE

CLINTON